



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hoboken Shipyards, Inc.
File: B-223581; B-223965
Date: September 19, 1986

DIGEST

1. Contracting officer's rejection of sole bid on the basis of his inability to determine price reasonableness, resulting in cancellation of the solicitation, is proper when the bid is significantly more than the government estimate and previous contract prices for similar services and when the record discloses no bad faith or fraud on the part of government officials.
2. Protest against a geographic restriction mandated by the Navy's Homeport Policy is untimely where the restriction is apparent on the face of a solicitation for drydocking services, but the protest is not filed until after bid opening.

DECISION

Hoboken Shipyards, Inc. protests the cancellation of invitation for bids (IFB) No. N62673-86-B-161, issued by the Supervisor of Shipbuilding, Conversion and Repair, U.S. Navy, Charleston, South Carolina. The solicitation was for the interim drydocking of the minesweeper USS ILLUSIVE. The Navy rejected Hoboken's bid, the only one submitted, and issued a new IFB, No. N62673-86-B-242, on a geographically restricted basis.

We deny the protest in part and dismiss it in part.

The original solicitation, issued on May 7, 1986, was set aside for small business concerns and was further restricted to holders of Master Ship Repair Agreements. Under its terms, the government was to deliver the vessel to the contractor's facility by the contract commencement date,

August 4, and the contractor was to return the vessel to the government by the completion date, September 25.^{1/}

At the June 18 bid opening, Hoboken, whose drydocking facilities are in Beyonne, New Jersey, submitted the only bid in the amount of \$1,156,332. The contracting officer, in comparing the bid to the government estimate and to other recent contract prices for similar services, could not determine that the bid was reasonable. He also noted that Hoboken was not located in the homeport area of the USS ILLUSIVE. The contracting officer therefore concluded that the Navy should reject Hoboken's bid and cancel the IFB; it did so on June 27.

On July 11, the Navy issued a resolicitation in which it limited the place of performance to the area between Charleston, South Carolina and Jacksonville, Florida. The Navy states that although it had been included in a synopsis of the procurement, the original IFB had erroneously omitted this restriction, which is mandated by the Navy's Homeport Policy.^{2/}

Hoboken recognizes that the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c) (1985) authorizes cancellation after bid opening where "only one bid is received and the contracting officer cannot determine the reasonableness of the bid price." Hoboken also recognizes that contracting officers enjoy a wide range of discretion in applying this regulation and that our Office will not disturb a determination of price unreasonableness absent a showing of fraud or bad faith on the part of government officials. See Western Roofing Service, B-219324, Aug. 30, 1985, 85-2 CPD ¶ 255.

^{1/} These dates have now been changed, since the Navy has delayed making award under the resolicitation pending our resolution of the protest.

^{2/} Hoboken, in a supplemental protest filed August 8, challenged the geographical restriction, which prevents it from competing for the resolicitation. The Navy correctly points out that this protest is untimely under our Bid Protest Regulations, which provide that protests based on alleged improprieties that are apparent before bid opening must be filed by that date. 4 C.F.R. § 21.2(a)(1) (1986). Here, bid opening on the resolicitation occurred on August 7.

Hoboken nevertheless contends that contracting officers must make a prima facie showing that cancellation is appropriate in a given situation. Here, Hoboken states, the contracting officer has not revealed the rationale for rejection of its bid because of reluctance to release the government estimate pending the completion of the reprourement. Hoboken requests that our Office review the government estimate and make an independent determination of the propriety of the Navy's actions. Hoboken also states that a comparison of its bid and the two significantly lower bids (\$741,227 and \$873,183) submitted in response to the resolicitation demonstrate the reasonableness of its original bid price. The \$415,105 difference between its bid and the low bid on the resolicitation, Hoboken contends, is solely attributable to the higher labor costs in New Jersey, and not to excessive or unreasonable profit in its bid. Moreover, Hoboken suggests, the Navy's reason for rejecting its bid was not related to price reasonableness, but rather to the location of its facility. To avoid the extra cost and inconvenience of delivering the ILLUSIVE to Hoboken's drydocking facilities in New Jersey, the protester alleges, the Navy decided to cancel and resolicit.

In determining the reasonableness of a particular bid price, contracting officers are not limited, as Hoboken suggests, to conducting a cost analysis of the low bid. A determination of price reasonableness may be based upon comparisons with government estimates, past procurement history, current market conditions, and any other relevant factors. Mid South Industries, Inc., B-216281, Feb. 11, 1985, 85-1 CPD ¶ 175.

Here, the Navy has submitted the government estimate for our in camera review. As evidence of the reasonableness of this estimate and the unreasonableness of Hoboken's bid, the Navy has also submitted its estimate and the successful bid for two other procurements that involved major overhauls in addition to drydocking. In both of these instances, the awardee's price was significantly less than the government estimate.

We have found cancellation justified when the low bid exceeded the government estimate by as much as 27 percent, Ford Construction Co., 64 Comp. Gen. 810 (1985), 85-2 CPD ¶ 26, and by as little as 7.2 percent. Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233. Although we cannot reveal the exact amount by which Hoboken's bid exceeded the government estimate, it was substantial, and accordingly, we find no basis for questioning the contracting officer's decision to reject Hoboken's bid and resolicit in this case.

We also find that the record does not support Hoboken's suggestion that the cancellation was due to the fact that the firm would not have performed this work within the homeport area. Even assuming that the contracting officer was partially motivated by this factor, we do not find that this constitutes fraud or bad faith, and the unreasonableness of Hoboken's price justified the cancellation in any event.

Finally, due to the untimeliness of Hoboken's protest, we will not consider the reasonableness of the geographic restriction itself.

The protest is denied in part and dismissed in part. Hoboken's claim for bid preparation costs also is denied.

for *Seymour Efron*
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General Counsel